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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,012	11/26/2003	John Fleming	P06633US1-5202	9557

34082 7590 05/26/2005

ZARLEY LAW FIRM P.L.C.  
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DES MOINES, IA 50309-2350

EXAMINER
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LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,012	<b>Applicant(s)</b> FLEMING ET AL.	
	<b>Examiner</b> F. Daniel Lopez	<b>Art Unit</b> 3745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-32 and 35 is/are allowed.
- 6) ☐ Claim(s) 1-11, 16-18, 20-22, 24, 25, 27 and 33 is/are rejected.
- 7) ☐ Claim(s) 12-15, 19, 23, 26, 28 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/24/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/11/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: there is no 64 in figures 1 and 3 (see e.g. page 13 first full paragraph).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

Claims 1-8, 24 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 10-12 "control power means for pivoting the yokes and supplying pressurized fluid to the hydrostatic power units" is considered a proper 112 6<sup>th</sup> means plus function limitation, except that there is nothing in the specification which defines what elements correspond to this means.

In claim 2 and 24 line 7-8 "one yoke minus 45 degrees and one yoke minus 15 degrees" is confusing since the first and second listed yokes appear to be different yokes. Suggest that throughout this claim the two yokes be differentiated by labeling them --one yoke-- and a --second yoke--. In claim 2 and 24 line 9 "one yoke plus 45 degree and one yoke minus 15 degrees" is confusing, since it is a repeat of the previous limitation (line 9-10). In claim 2 and 24 last line "one yoke 45 degree and one yoke at 15 degrees" is confusing, since there is neither a plus nor a minus in front of the angles, to indicate which direction.

Claim 3 is confusing, since it is dependent on itself.

In claim 4 line 8- 10 "housing controls a flow of fluid to the servo pistons and to the cylinder blocks to determine the orientation of the yokes" is confusing, since only the flow to the servo pistons control orientation of the yokes.

In claim 7 line 1-2 "the porting plate" has no antecedent basis. Suggest that claim 7 depend from claim 6.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dowty et al (yokes 22 and 42 have complementary surfaces which are shown of fig 3 as interacting to minimize space).

Claims 4, 5, 9, 10, 17, 18 and 33 are rejected under 35 U.S.C. § 102(b) as being anticipated by Folsom et al (see discussion below).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

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invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 11 is rejected under 35 U.S.C. § 103 as being unpatentable over Folsom et al. Folsom et al discloses a bent axis hydrostatic unit (e.g. fig 60-71) comprising two yokes (342, 344) pivotally mounted to pivot on a frame in intersecting paths, a respective hydrostatic unit (330M, 330P) on each yoke and operatively connected to an output shaft (140, 200); a controlled power means including a control housing (108) for pivoting the yokes and a fluid manifold (335) which serves as a conduit for high pressure fluid between the hydrostatic units; wherein the yokes have complementary surfaces (tapers on 342) to minimize space occupied by yokes when the complementary surfaces are in closely spaced relation; but does not disclose that the yokes are of single piece construction.

Official notice is taken that it is well known to make yoke for a bent axis hydrostatic unit either of multiple pieces or of a single piece. It would have been obvious at the time the invention was made to one having ordinary skill in the art to make the yokes of Folsom et al, of a single piece, as a matter of engineering expediency.

Claims 1, 8, 16, 20-22 and 27 are rejected under 35 U.S.C. § 103 as being unpatentable over Folsom et al in view of Moya. Folsom et al discloses, as discussed above, all of the elements of claims 1, 8, 16, 20-22 and 27; but does not disclose that there is a stop means on the yokes and frame to limit the pivotal movement of the yokes; or that the yokes can pivot between minus 45 degree and plus 45 degrees, and including a position at minus 15 degrees.

Moya teaches, for a bent axis hydrostatic unit comprising a yoke (18) pivotally mounted to pivot on a frame (e.g. 2), a hydrostatic unit (8) on the yoke and operatively connected to an output shaft (3); that there is a stop means (edge of 18, 24a) on the yokes and frame, for the purpose of adjustably limiting the pivotal movement of the yokes.

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Since Folsom et al and Moya are both from the same field of endeavor, the purpose disclosed by Moya would have been recognized in the pertinent art of Folsom et al. It would have been obvious at the time the invention was made to one having ordinary skill in the art to include stop means on the yokes and frame of Folsom et al, as taught by Moya, for the purpose of adjustably limiting the pivotal movement of the yokes.

### **Conclusion**

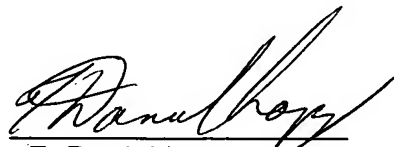
Claims 12-15, 19, 23, 26, 28 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2, 6, 7, 24 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 29-32 and 35 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is (703) 872-9306. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
May 24, 2005